

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

_____	)	
MARJORIE FERRELL, et al.,	)	Civil Action No. C-1-01-447
	)	
Plaintiffs,	)	Judge Sandra S. Beckwith
	)	Magistrate Judge Timothy S. Hogan
v.	)	
	)	
WYETH-AYERST LABORATORIES,	)	
INC., et al.,	)	
	)	
Defendants.	)	
_____	)	

**PLAINTIFFS' MOTION TO EXTEND THE TIME FOR SETTING A  
BRIEFING SCHEDULE ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Plaintiffs, by their attorneys, respectfully move this Court for an order extending the time in which it will set briefing schedule on Defendants' motion of summary judgment [Doc. No. 164], filed August 1, 2006. In support hereof, Plaintiffs state as follows:

1. At the telephonic hearing conducted on August 4, 2006, the Court stated as follows:

I'm going to hold this motion [*i.e.*, Plaintiffs' Rule 41(a)(2) motion] in abeyance for two weeks, till August the 18th. If you all haven't worked something out by then, the motion for summary judgment schedule is going to kick in and the plaintiffs will have to respond to the motion, if they have a response, in due course pursuant to local rules, then the defense will file a reply, and we'll consider the merits of the motion; and depending on what the result of that is, we'll decide what to do with the class certification and notice.

\* \* \*

... So, I'm extending the briefing schedule for the motion for summary judgment by two weeks. But if you all can sort something out that meets your respective needs within the next two weeks, I'm certainly open to your innovation.

Aug. 4, 2006 Tr. at 25.

2. The parties may have “sort[ed] something out that meets [their] respective needs,” but the result will not be known by the end of the two weeks afforded by the Court. Plaintiffs therefore request the Court to delay the briefing schedule until the parties can report on the results of their efforts to “work[] something out.”

3. As the Court is aware, a parallel action styled *Elizabeth Blevins v. Wyeth-Ayerst Laboratories, Inc. and American Home Products Corp.*, Case No. 324380, is pending in the Superior Court of California for the County of San Francisco on behalf of a certified class of end-payors for Premarin in the State of California.

4. As the Court is further aware, an action styled *Deyo v. Wyeth*, No. 735-12-04 Wncv, is pending in Vermont Superior Court, Washington County. That case alleges claims on behalf of a putative Vermont class concerning the Wyeth products Premarin, Premphase and Prempro.

5. With the encouragement of Judge Richard Kramer, the judge presiding over the *Blevins* action, the parties to that action have agreed to submit their dispute to non-binding mediation. An eight-hour mediation session before the Hon. Edward A. Infante (Ret.) has been scheduled for August 30, 2006. The parties are required to submit memoranda and other documents to Judge Infante by August 23, 2006.

6. On August 14, 2006, a teleconference was held by counsel for Wyeth and counsel for plaintiff in *Blevins*. In that teleconference, counsel for Wyeth suggested that the mediation should seek to reach a global resolution and thus, should include, the *Ferrell* action and the *Deyo* action. Counsel for *Blevins* (who also represent plaintiffs in *Ferrell*) and Judge Infante agreed

that such an approach was appropriate.

7. Accordingly, counsel for Plaintiffs respectfully request that the briefing schedule on Defendants' motion for summary judgment be deferred until the conclusion of the mediation with Judge Infante. The parties' efforts are best spent preparing mediation materials in an effort to resolve this and the other actions through mediation.

8. Deferring briefing on Defendants' motion for summary judgment will not affect the schedule otherwise in place, as the deadline for filing dispositive motions is August 31, 2006. Jan. 5, 2006 Calender Order ¶ 4 [Doc. No. 144].

WHEREFORE, for the reasons stated, Plaintiffs respectfully request that the briefing schedule on Defendants' motion for summary judgment be deferred until the parties report to the Court on the conclusion of mediation before Judge Infante.

Dated: August 16, 2006

Respectfully submitted,

By: /s/ Kenneth A. Wexler  
One of Plaintiffs' Counsel

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**CERTIFICATE OF SERVICE**

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